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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/624,098	07/24/2000	Mario Tenuta	2527-1A	5268

7590

09/20/2002

Eric Fincham
316 Knowlton Road
Lac Brome Quebec, J0E 1V0
CANADA

EXAMINER

NAFF, DAVID M

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 09/20/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

ATTACHMENT TO FORM PTOL-303

Applicants urge that increasing soil acidity and application of fungicides to soil to control potato scab disease as disclosed by Anderson et al results from the fungicide, and not from increasing the acidity. However, Anderson et al is disclosing that increasing acidity in combination with application of a fungicide results in control of potato scab disease. If acidity did not have an affect on control, increasing acidity would have not been mentioned. The present claims and specification do not exclude the presence of a fungicide.

Applicants have provided an Exhibit A as showing the results of a study of reducing soil pH using sulfuric acid on potato scab disease, and state that the study shows that merely lowering pH has no effect on potato scab disease incidents.

However, the study and results shown have not been presented in a declaration. Even if the study is presented in a declaration, the study is unpersuasive. While the study may show that pH lowering alone has no affect, the study indicates that the affect of pH lowering is to convert nitrite to nitrous acid to obtain a sufficient amount of nitrous acid in soil to be lethal to *S. Scabies*. The amount of nitrous acid that is lethal is disclosed as 0.03 mM. Nitrous acid can be considered a fungicide, and controlling *S. Scabies* as disclosed by the study is using a fungicide in combination with increasing acidity as in the prior art as suggested by Anderson et al. While the references applied may not disclose lowering the pH to produce sufficient nitrous acid to be lethal to *S. Scabies*, the present claims do not require the nitrogen containing

material added and reducing the pH below 5.5 to provide in the soil sufficient nitrous acid to be lethal to *S. Scabies*. Adding any nitrogen containing material in any amount under any conditions in combination with lowering the pH below 5.5 will not result in producing sufficient
5 nitrous acid in the soil to provide effective control of *S. Scabies* in the absence of a fungicide other than nitrous acid.

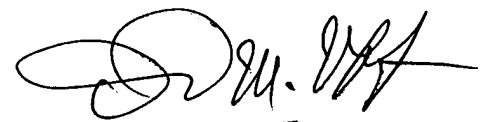
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Naff whose telephone number is (703) 308-0520. The examiner can normally be reached on
10 Monday-Thursday and every other Friday from about 8:30 AM to about 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, a message can be left on voice mail.

If attempts to reach the examiner by telephone are unsuccessful, the
15 examiner's supervisor, Mike Wityshyn, can be reached at telephone number (703) 308-4743.

The fax phone number is (703) 872-9306 before final rejection or (703) 872-9307 after final rejection.

Any inquiry of a general nature or relating to the status of this
20 application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.


DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1651